

SECTION I – CONTRACT CLAUSES

I.1 3.1-1 CLAUSES AND PROVISIONS INCORPORATED BY REFERENCE (December 2005)

This screening information request (SIR) or contract, as applicable, incorporates by reference the provisions or clauses listed below with the same force and effect as if they were given in full text. Upon request, the Contracting Officer (CO) will make the full text available, or offerors and contractors may obtain the full text via Internet at:

<http://www.asu.faa.gov/conwrite/> (on this web page, select "Search and View Clauses").

- 3.1.7-5 Disclosure of Conflicts of Interest (May 2001)**
- 3.2.2.3-4 Samples (July 2004)**
- 3.2.2.3-8 Audit and Records (July 2004)**
- 3.2.2.3-37 Notification of Ownership Changes (July 2004)**
- 3.2.2.7-6 Protecting the Government's Interest when Subcontracting with Contractors Debarred, Suspended, or Proposed for Debarment (April 1996)**
- 3.2.5-1 Officials Not to Benefit (April 1996)**
- 3.2.5-3 Gratuities or Gifts (January 1999)**
- 3.2.5-4 Contingent Fees (October 1996)**
- 3.2.5-5 Anti-Kickback Procedures (October 1996)**
- 3.2.5-8 Whistleblower Protection for Contractor Employees (April 1996)**
- 3.3.1-15 Assignment of Claims (April 1996)**
- 3.3.1-33 Central Contractor Registration (October 2005)**
- 3.3.1-34 Payment by Electronic Funds Transfer/Central Contractor Registration (October 2005)**
- 3.3.2-1 FAA Cost Principles (October 1996)**
- 3.6.1-3 Utilization of Small, Small Disadvantaged Women-Owned, and Service-Disabled Veteran Owned Small Business Concerns (September 2001)**
- 3.6.1-4 Small, Small Disadvantaged, Women-Owned and Service-Disabled Veteran Owned Small Business Subcontracting Plan (September 2001)**

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- 3.6.1-6 Liquidated Damages - Subcontracting Plan** (September 2001)
- 3.6.1-7 Limitations on Subcontracting** (August 1997)
- 3.6.1-9 Mentor-Protege Program** (January 1999)
- 3.6.1-10 Evaluation of Contractor Participation in the FAA Mentor-Protege Program** (January 1999)
- 3.6.1-11 Mentor Requirements and Evaluation** (January 1999)
- 3.6.2-4 Walsh-Healey Public Contracts Act** (April 1996)
- 3.6.2-9 Equal Opportunity** (August 1998)
- 3.6.2-12 Affirmative Action for Special Disabled and Vietnam Era Veterans** (January 1998)
- 3.6.2-13 Affirmative Action for Workers with Disabilities** (April 2000)
- 3.6.2-14 Employment Reports on Special Disabled Veterans and Veterans of Vietnam Era** (January 1998)
- 3.6.3-1 Clean Air and Water Certification** (April 2000)
- 3.6.4-2 Buy American Act--Supplies** (July 1996)
- 3.1.8-1 Cancellation, Rescission and Recovery of Funds for Illegal or Improper Activity** (October 2009)
- 3.10.1-7 Bankruptcy** (April 1996)
- 3.10.1-9 Stop-Work Order** (October 1996)
- 3.10.1-12 Changes--Fixed-Price** (April 1996)
- 3.10.1-25 Novation and Change-Of-Name Agreements** (January 2003)
- 3.10.4-2 Inspection of Supplies--Fixed-Price** (November 1997)
- 3.10.4-4 Inspection of Services--Both Fixed-Price & Cost Reimbursement** (April 1996)
- 3.10.6-1 Termination for Convenience of the Government (Fixed Price)** (October 1996)
- 3.10.6-4 Default (Fixed-Price Supply and Service)** (October 1996)
- 3.13-5 Seat Belt Use by Contractor Employees** (January 1999)
- 3.14-5 Resource Conservation and Recovery Act, 42 U.S.C. s/s 6901 et seq.** (1976)

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I.2 3.2.4-20 Indefinite Quantity (July 1996)

(a) This is an indefinite-quantity contract for the supplies or services specified, and effective for the period stated, in the Schedule. The quantities of supplies and services specified in the Schedule are estimates only and are not purchased by this contract.

(b) Delivery or performance shall be made only as authorized by orders issued in accordance with the "Ordering" clause. The Contractor shall furnish to the Government, when and if ordered, the supplies or services specified in the Schedule up to and including the quantity designated in the Schedule as the maximum. The Government shall order at least the quantity of supplies or services designated in the Schedule as the minimum.

(c) Except for any limitations on quantities in the "Order Limitations" clause or in the Schedule, there is no limit on the number of orders that may be issued. The Government may issue orders requiring delivery to multiple destinations or performance at multiple locations.

(d) Any order issued during the effective period of this contract and not completed within that period shall be completed by the Contractor within the time specified in the order. The contract shall govern the Contractor's and Government's rights and obligations with respect to that order to the same extent as if the order were completed during the contract's effective period; provided, that the Contractor shall not be required to make any deliveries under this contract after 30 days of the expiration of this contract.

(End of clause)

I.3 3.2.5-6 Restrictions on Subcontractor Sales to the FAA (April 1996)

(a) Except as provided in (b) below, the Contractor shall not enter into any agreement with an actual or prospective subcontractor, nor otherwise act in any manner, which has or may have the effect of restricting sales by such subcontractors directly to the FAA of any item or process (including computer software) made or furnished by the subcontractor under this contract or under any follow-on production contract.

(b) The prohibition in (a) above does not preclude the Contractor from asserting rights that are otherwise authorized by law or regulation.

(c) The Contractor agrees to incorporate the substance of this clause, including this paragraph (c), in all subcontracts under this contract.

(End of clause)

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I.4 3.6.4-2 Buy American Act--Supplies (July 1996)

(a) The Buy American Act (41 U.S.C. 10) and Executive Order No. 10582, dated December 17, 1954, as amended, provide that the Government give preference to domestic end products.

(b) Definitions:

(1) "Components," as used in this clause, means those articles, materials, and supplies incorporated directly into the end products.

(2) "Domestic end product," as used in this clause, means (1) an unmanufactured end product mined or produced in the United States, or (2) an end product manufactured in the United States, if the cost of its components mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. Components of foreign origin of the same class or kind as the products referred to in subparagraphs (c)(2) or (3) of this clause shall be treated as domestic. Scrap generated, collected, and prepared for processing in the United States is considered domestic.

(3) "End products," as used in this clause, means those articles, materials, and supplies to be acquired for public use under this contract.

(4) "Foreign offer," as used in this clause, means an offered price for a foreign end product, including transportation to destination and duty (whether or not a duty free entry certificate is issued).

(c) The Contractor shall deliver only domestic end products, except those--

(1) For use outside the United States;

(2) That the FAA determines are not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities of a satisfactory quality;

(3) For which the FAA determines that domestic preference would be inconsistent with the public interest; or

(4) For which the FAA determines the cost to be unreasonable.

(i) Unless the FAA determines otherwise, the offered price of a domestic end product is unreasonable when the lowest acceptable domestic offer exceeds the lowest acceptable foreign offer, inclusive of duty, by:

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(A) More than 6 percent, if a domestic offer is from a large business that is not a labor surplus area concern; or

(B) More than 12 percent, if a domestic offer is from a small business concern or any labor surplus area concern.

(ii) The evaluation in subparagraph (i) above shall be applied on an item by item basis or to any group of items on which award may be made, as specifically provided by the screening information request.

(iii) If an award of more than \$250,000 would be made to a domestic concern if the 12 percent factor were applied, but not if the 6 percent factor were applied, the FAA will decide whether award to the domestic concern would involve unreasonable cost.

(End of clause)

I.5 3.8.4.2 Government Sources for Products and Services (February 2005)

The CO may use available Government sources when they offer the best value to satisfy the FAA's mission need. However, the CO must acquire products and services offered through the Randolph-Sheppard Vending Facilities Program (20 U.S.C. 107) and Javits-Wagner-O'Day Program (41 U.S.C. 46).

The CO may allow contractors with cost-reimbursement contracts to use Government sources when in the FAA's best interest and the products or services are available. Contractors with fixed-price contracts to protect classified information may acquire security equipment through GSA sources after CO approval.

I.6 3.9.1-1 Contract Disputes (November 2002)

(a) All contract disputes arising under or related to this contract shall be resolved through the Federal Aviation Administration (FAA) dispute resolution system at the Office of Dispute Resolution for Acquisition (ODRA) and shall be governed by the procedures set forth in 14 C.F.R. Parts 14 and 17, which are hereby incorporated by reference. Judicial review, where available, will be in accordance with 49 U.S.C. 46110 and shall apply only to final agency decisions. A contractor may seek review of a final FAA decision only after its administrative remedies have been exhausted.

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(b) The filing of a contract dispute with the ODRA may be accomplished by mail, overnight delivery, hand delivery, or by facsimile. A contract dispute is considered to be filed on the date it is received by the ODRA.

(c) Contract disputes are to be in writing and shall contain:

(1) The contractor's name, address, telephone and fax numbers and the name, address, telephone and fax numbers of the contractor's legal representative(s) (if any) for the contract dispute;

(2) The contract number and the name of the Contracting Officer;

(3) A detailed chronological statement of the facts and of the legal grounds for the contractor's positions regarding each element or count of the contract dispute (i.e., broken down by individual claim item), citing to relevant contract provisions and documents and attaching copies of those provisions and documents;

(4) All information establishing that the contract dispute was timely filed;

(5) A request for a specific remedy, and if a monetary remedy is requested, a sum certain must be specified and pertinent cost information and documentation (e.g., invoices and cancelled checks) attached, broken down by individual claim item and summarized; and

(6) The signature of a duly authorized representative of the initiating party.

(d) Contract disputes shall be filed at the following address:

(1) Office of Dispute Resolution for Acquisition, AGC-70,
Federal Aviation Administration,
800 Independence Ave, S.W., Room 323,
Washington, DC 20591,

Telephone: (202) 267-3290,

Facsimile: (202) 267-3720; or

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(2) other address as specified in 14 CFR Part 17.

(e) A contract dispute against the FAA shall be filed with the ODRA within two (2) years of the accrual of the contract claim involved. A contract dispute by the FAA against a contractor (excluding contract disputes alleging warranty issues, fraud or latent defects) likewise shall be filed within two (2) years after the accrual of the contract claim. If an underlying contract entered into prior to the effective date of this part provides for time limitations for filing of contract disputes with the ODRA which differ from the aforesaid two (2) year period, the limitation periods in the contract shall control over the limitation period of this section. In no event will either party be permitted to file with the ODRA a contract dispute seeking an equitable adjustment or other damages after the contractor has accepted final contract payment, with the exception of FAA claims related to warranty issues, gross mistakes amounting to fraud or latent defects. FAA claims against the contractor based on warranty issues must be filed within the time specified under applicable contract warranty provisions. Any FAA claims against the contractor based on gross mistakes amounting to fraud or latent defects shall be filed with the ODRA within two (2) years of the date on which the FAA knew or should have known of the presence of the fraud or latent defect.

(f) A party shall serve a copy of the contract dispute upon the other party, by means reasonably calculated to be received on the same day as the filing is to be received by the ODRA.

(g) After filing the contract dispute, the contractor should seek informal resolution with the Contracting Officer.

(h) The FAA requires continued performance with respect to contract disputes arising under this contract, in accordance with the provisions of the contract, pending a final FAA decision.

(i) The FAA will pay interest on the amount found due and unpaid from (1) the date the Contracting Officer receives the contract dispute, or (2) the date payment otherwise would be due, if that date is later, until the date of payment. Simple interest on contract disputes shall be paid at the rate fixed by the Secretary of the Treasury that is applicable on the date the Contracting Officer receives the contract dispute and then at the rate applicable for each 6-month period as fixed by the Treasury Secretary until payment is made.

(j) Additional information and guidance about the ODRA dispute resolution process for contract disputes can be found on the ODRA Website at <http://www.faa.gov>.

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(End of clause)

I.7 3.9.1-2 Protest After Award (August 1997)

(a) Upon receipt of a notice that a protest has been filed with the FAA Office of Dispute Resolution, or a determination that a protest is likely, the Administrator or his designee may instruct the Contracting Officer to direct the Contractor to stop performance of the work called for by this contract. The order to the Contractor shall be in writing, and shall be specifically identified as a stop-work order issued under this clause. Upon receipt of the order, the Contractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage. Upon receipt of the final decision or other resolution of the protest, the Contracting Officer shall either:

- (1) Cancel the stop-work order; or
- (2) For other than cost-reimbursement contracts, terminate the work covered by the order as provided in the "Default" or the "Termination for Convenience of the Government" clause(s) of this contract; or
- (3) For cost-reimbursement contracts, terminate the work covered by the order as provided in the "Termination" clause of this contract.

(b) If a stop-work order issued under this clause is canceled either before or after the final resolution of the protest, the Contractor shall resume work. The Contracting Officer shall make for other than cost-reimbursement contracts, an equitable adjustment in the delivery schedule or contract price, or both; and for cost-reimbursement contracts, an equitable adjustment in the delivery schedule, the estimated cost, the fee, or a combination thereof, and in any other terms of the contract that may be affected; and the contract shall be modified, in writing, accordingly, if--

- (1) The stop-work order results in an increase in the time required for, or in the Contractor's cost properly allocable to, the performance of any part of this contract; and
- (2) The Contractor asserts its right to an adjustment within 30 days after the end of the period of work stoppage; provided, that if the Contracting Officer decides the facts justify the action, the Contracting Officer may receive and act upon a proposal submitted at any time before final payment under this contract.

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(c) If a stop-work order is not canceled and the work covered by the order is terminated for the convenience of the Government, the Contracting Officer shall allow reasonable costs resulting from the stop-work order in arriving at the termination settlement.

(d) If a stop-work order is not canceled and the work covered by the order is terminated for default, the Contracting Officer shall allow, by equitable adjustment or otherwise, reasonable costs resulting from the stop-work order.

(e) The Government's rights to terminate this contract at any time are not affected by action taken under this clause.

(End of clause)

I.8 3.10.1-25 Novation and Change-Of-Name Agreements (January 2003)

(a) In the event the Contractor wishes the Government to recognize a successor in interest to the contract due to a complete transfer of assets required to perform the contract or an applicable merger, the Contractor must submit a written request to the Contracting Officer with the required documentation. This is required in order to obtain the Government's consent for the successor Contractor to assume contract performance and receive payments for deliveries.

(b) For a change of Contractor name the contractor agrees to provide the necessary documentation to establish that a legal name change has been made, including any revision to payment addresses/accounts.

(c) The Contractor agrees to follow the procedures and provide the documents, as requested by the cognizant Contracting Officer, described in FAA Procurement Guidance entitled "Novation and Change-Of-Name Agreements" published at http://fast.faa.gov/procurement_guide/html/3-10-1.htm.

(d) When it is in the Government's interest not to concur in the transfer of the contract from one company to another, the Contractor remains subject to all contract terms and conditions including termination for default should the Contractor fail to perform.

(End of Clause)

I.9 3.13-1 Approval of Contract (April 1996)

This contract is subject to the written approval of the Contracting Officer and shall not be binding until so approved.

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(End of clause)